IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE S. ANANDA REDDY

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WRIT PETITION NO : 15002 of 2004

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Date: 06.12.2005

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Between:

1 P. Purnachandra Rao, S/o P.K. Nageswara Rao,
R/o D.No.19/428, Circarthota, Machilipatnam,
Krishna District and others.

..... PETITIONERS

AND

1 The Primary Agricultural Co-operative Society, Lakshmipuram,
rep. by its Incharge Secretary, Lakshmipuram, Challapalli
Mandal, Krishna District and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE S. ANANDA REDDY

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WRIT PETITION NO : 15002 of 2004

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ORDER:

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This writ petition is filed by the petitioners aggrieved by the order passed by the third respondent in rejecting the claim made by them under Rule 52 (21) of the Andhra Pradesh Co-operative Societies Rules, 1964 (for short 'the Rules).

The petitioners claim that they have acquired right over the schedule properties i.e., items 1 to 3, under the Will, said to have been executed by their grand father. As such, their father viz., P.K.Nageswara Rao, second respondent herein, has no right over the said items of schedule properties, which are attached, and are sought to be proceeded for recovery of alleged dues from the second respondent. However, it was contended on behalf of the first respondent Society that the Will, under which the petitioners are claiming, is only an unregistered document. Therefore, it cannot be relied upon.

The third respondent, without considering the rival contentions elaborately, simply accepted the contentions of the first respondent Society, and rejected the objections stating that the claim is not maintainable under Rule 52(21) of the Rules. Aggrieved by that, the petitioners have come up with the present writ petition.

The learned counsel for the petitioners contended that the Rules contemplates an elaborate enquiry when an objection, as to the attachment of the properties, is filed claiming that the properties are not liable for attachment and to be proceeded with for the sale of the said items. He also contended that though elaborate contentions were raised, the third respondent rejected the claim as not maintainable with one line order. Therefore, the impugned order is liable to be set aside.

On the other hand, the learned counsel appearing for the third respondent supported the order. He contended that even as per the claim of the petitioners, their father,

who is the second respondent in the claim petition, was given the right to enjoy the property during his lifetime, but not to alienate the same. But, however, the petitioners have claimed differently stating that their mother is the guardian, but not their father. He also contended that the Village Records show that the petitioners' father was enjoying the schedule properties and in fact the properties are standing in his name. Therefore, the petitioners were only set up to obstruct the recovery of proceedings. Hence, sought to sustain the order.

Heard both sides and considered the material available on record.

As the impugned order, *prima facie,* shows that the third respondent did not consider the rival contentions and in fact did not pass any order on merits, but rejected the claim petition as not maintainable, which is not in accordance with law.

Under the above circumstances, without expressing any opinion on the merits, the impugned order is set aside, and the matter is restored to the third respondent to consider the objections and the rival contentions, and pass a detailed reasoning order.

At the time of hearing it is represented that the properties have already been sold and the sale proceeds have been appropriated towards the dues of the society. Insofar as that proceedings are concerned, the same shall not be effected. But, however, the same shall be subject to the outcome of the final order that would be passed by the third respondent. The third respondent is directed to pass final order expeditiously, preferably, within a period of two months from the date of receipt of a copy of this order.

The writ petition is accordingly allowed to the extent indicated above.

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(S. Ananda Reddy, J)

Date: 06.12.2005

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